FFICE COPY

Supreme Court, U.S.
FILED
AUG 20 1971
E. ROBERT SEAVER, CLERK

APPENDIX

Supreme Court of the United States

TERM, 1971

No. 69-5003

WILLIAM HENRY FURMAN,

Petitioner,

—v.—

STATE OF GEORGIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR CERTIORARI FILED JULY 23, 1969
CERTIORARI GRANTED JUNE 28, 1971

Supreme Court of the United States

TERM, 1971

No. 69-5003

WILLIAM HENRY FURMAN,

Petitioner,

—v.—

STATE OF GEORGIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

INDEX

	Page
Record from the Superior Court of Chatham County, Georgia	
Relevant Docket Entries	1
Indictment filed September 12, 1967	2
Verdict of Jury, September 20, 1968	4
Sentence of Court, September 20, 1968	5
Petition for Psychiatric Examination and order granting psychiatric examination, entered October 24, 1967	6
Clerk's certificate, dated March 17, 1969—Copy of record from Chatham Superior Court to the Supreme Court of Georgia	9

Page

Record from the Superior Court of Chatham County, Georgia —Continued

Transcript of trial, September 20, 1968 10
Appearances 10
Jury selection 12
State's Witnesses: 17
Testimony of Lanell Micke
—direct 17
—cross 22
—redirect 22
—recross 23
Testimony of Sgt. G. W. Spivey
—direct 24
—cross 28
—redirect 31
Testimony of Dr. Harold Smith
—direct 32
—cross 33
Testimony of J. E. Mincey
—direct 33
Testimony of John F. Walters
—direct 34
—cross 36
Testimony of A. Hall
—direct 37
—cross 41
Testimony of Officer J. R. Goode
—direct 41
—cross 43
—redirect 43
Testimony of Detective B. W. Smith
—redirect 44
—recross 45
—re-redirect 46
—re-recross 48
Testimony of Dr. Charles Sullenger
—direct 49

Page

ecord from the Superior Court of Chatham County, Georgia -Continued

Transcript of trial, September 20, 1968—Continued

Defendant's Witnesses: 50

William Henry Furman—Unsworn statement 50

Testimony of Sgt. G. W. Spivey (recalled) —recross 55

State Exhibit No. 8 57

Charge of the Court 59

Certificate of Court Commissioner, EJC of Ga. 65

pinion and Judgment of the Supreme Court of Georgia, Duckworth, J., dated April 24, 1969 66

rder granting motion for leave to proceed informa pauperis and granting the petition for writ of certiorari, June 28, 1971 69

IN THE SUPERIOR COURT OF
CHATHAM COUNTY, GEORGIA

STATE OF GEORGIA

v.

WILLIAM HENRY FURMAN

CRONOLOGICAL INDEX OF RELEVANT DOCKET ENTRIES

1967	
September 12	Indictment
October 24	Petition for Psychiatric Examination and Order Granting Phychiatric Examination
1968	
September 20	Jury Verdict on Indictment
September 20	Sentence of the Court
1969	
March 3	Notice of Appeal

GEORGIA, CHATHAM COUNTY

THE GRAND JURORS SELECTED, CHOSEN, AND SWORN FOR THE COUNTY OF CHATHAM, TO-WIT:

1 Walter A. Fulmer Foreman
2 Armand D. Wells
3 W. Claggett Gilbert, Jr.
4 Eugene G. Hardy
5 Ralph E. Kennickell
6 Richard Singleton
7 Charles L. Stewart
8 William L. Hopkins, Jr.
9 William D. Mathews
10 Glenn C. Kimble
11 James R. Fisher
12 J. Fleming Bel
13 Mary E. Heidt
14 Thomas C. Bordeaux
15 James A. Eason
16 Frank J. Finocchiaro
17 Eros K. Bell
18 Dwight L. Bliss, Sr.
19 Jake Fine, Jr.
20 Fred H. Quante
21 Hugh H. Jackson, Jr.
22 David A. Byck, III
23 Frederick J. Hart, Jr.

in the name and behalf of the citizens of Georgia, charge and accuse WILLIAM HENRY FURMAN of the county and State aforesaid, with the offense of MURDER for that the said Defendant in the County of Chatham and State of Georgia aforesaid, on the 11th day of August in the year of our Lord one thousand nine hundred and sixty-seven, with force and arms, Did unlawfully and with malice aforethought kill and murder William J. Micke, by shooting the said William J. Micke with a pistol, contrary to the laws of the State of Georgia, the good order, peace and dignity thereof.

/s/ Andrew J. Ryan
Solicitor General
Eastern Judicial Circuit of
Georgia

No. 17216

IN THE SUPERIOR COURT
OF CHATHAM COUNTY
SEPTEMBER TERM, 1967

STATE

vs.

WILLIAM HENRY FURMAN

MURDER

B. W. SMITH
Prosecutor

TRUE BILL

9/12 1967

/s/ W. W. Fulmer
Foreman

Minute Book 41 Folio 264
42 353

ANDREW J. RYAN, JR.
Solicitor General E. J. C.
of Georgia.

Witnesses for the State:

B. W. Smith, J. M. Tanquay, Lt. Kendricks, L. Lower, Johnny Dozier, C. Walker, J. D. Wood, A. Hall, G. W. Spivey, J. R. Goode, H. F. Prouse, J. E. Mincey, C. W. Waters, Mrs. William J. Micke, Dr. H. M. Smith, James Furman.

The Defendant William Henry Furman being in open Court, waives arraignment, pleads Not Guilty, and puts self upon the country.

/s/ B. C. Mayfield
Atty. for Deft.

The State says that he is Guilty, and will so prove this 20 day of Sept. 1968.

/s/ Andrew J. Ryan, Jr.
Solicitor General E. J. C.
of Georgia
September 20, 1968

We the jury find the defendant guilty.

/s/ Thomas V. Dye
Foreman

This indictment was returned into Open Court, on the 12 day of Sept., 1967

/s/ Ben P. Axson
Clerk
Superior Court of Chatham
County, Georgia

IN THE SUPERIOR COURT
OF CHATHAM COUNTY, GEORGIA
EASTERN JUDICIAL CIRCUIT

SEPTEMBER 1968 TERM

Indictment No. 17216

STATE OF GEORGIA

vs

WILLIAM HENRY FURMAN

Charge: Murder

Plea: Of Not Guilty

Verdict: Guilty

SENTENCE OF THE COURT

The above defendant, William Henry Furman having on September 20, 1968 at the present Term of Court, been convicted in the Superior Court of Chatham County, Georgia, of the offense of murder, a capital crime, without recommendation,

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the said William Henry Furman be delivered to the Director of Corrections for electrocution at such penal institution as may be designated by said Director, and the said defendant shall, on November 8, 1968, be put to death by electrocution in the manner provided by law.

IN OPEN COURT, this September 20, 1968.

/s/ Dunbar Harrison
Judge Superior Court
Eastern Judicial Circuit of
Georgia

ANDREW J. RYAN, JR.
Solicitor General

B. CLARENCE MAYFIELD
Attorney for Defendant

TO THE SUPERIOR COURT
OF CHATHAM COUNTY

STATE OF GEORGIA
COUNTY OF CHATHAM

INDICTMENT FOR MURDER

No. ———

STATE

vs.

WILLIAM HENRY FURMAN

The petition of WILLIAM HENRY FURMAN, respectfully shows:

1. This application is being made by his counsel on his behalf, which counsel deems necessary for the adequate defense of said Defendant.

2. That following an interview with said Defendant, Counsel being very much concerned as to the extent of Defendant's mentality and ability to realize the gravity of his actions, Counsel feels that in the interest of justice that Defendant should be given an extensive, thorough and comprehensive psychiatric examination and evaluation in accordance with mordern accepted methods of psychiatry at an appropriate institution to be designated by this Court at the expense of the State in order for the Court and Jury to have this information in determining the guilt or innocence of the accused and should Defendant be found guilty as charged, in assessing the proper punishment.

WHEREFORE, Movant prays that this Honorable Court issue a Rule Nisi to the Solicitor General of Chatham County, Georgia, to show cause, if any he can, why this petition should not be granted.

/s/ B. Clarence Mayfield
Attorney for Defendant

RULE—NISI

The foregoing petition having been presented and upon consideration, it is Ordered that a Rule Nisi issue and that the Honorable Andrew J. Ryan, Jr., Solicitor General, Chatham County, Georgia, show cause before me on the 24 day of Oct., 1967, why this petition should not be granted.

In Open Court, this 24 day of October, 1967.

/s/ Dunbar Harrison
Judge
Superior Court, E. J. C. of
Georgia

IN THE SUPERIOR COURT
OF CHATHAM COUNTY

GEORGIA
CHATHAM COUNTY

INDICTMENT FOR MURDER

No. ———

THE STATE

vs.

WILLIAM HENRY FURMAN

ORDER

The defendant herein through his attorney having filed a special plea of insanity,

Upon consideration of the matter, it is ordered that the said WILLIAM HENRY FURMAN, be transported by the Sheriff of this County to the Milledgeville State Hospital for psychiatric examination and be kept there until said examination has been completed. Upon the completion of such examination, the defendant is to be returned to this County to stand trial for the offense with which he is charged.

IT IS FURTHER ORDERED that the findings of said Hospital be transmitted to this Court with a copy thereof to the Solicitor General of this Circuit and to Counsel for the defendant

This 24 day of October, 1967.

/s/ Dunbar Harrison
Judge
Superior Court E. J. C. of
Georgia

CLERK'S OFFICE, SUPERIOR COURT

STATE OF GEORGIA
CHATHAM COUNTY

I, BEN AXSON, Clerk of the Superior Court of Chatham County, Georgia do hereby certify: That the foregoing pages, hereto attached, contain the original Notice of Appeal together with a true and complete copy of those portions of the record required by the Notice of Appeal, to be transmitted to the Supreme Court of Georgia, in the case of STATE OF GEORGIA, Appellee versus WILLIAM JENRY FURMAN, Appellant.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed the Seal of the Superior Court, at the City of Savannah, County and State aforesaid upon the 17 day of March in the year of our Lord One Thousand Nine Hunderd and 69.

/s/ Ben P. Axson
Clerk
Superior Court, Chatham
County, Georgia

[fol. 1]

IN THE SUPERIOR COURT
OF CHATHAM COUNTY, GEORGIA

Indictment 17,216—Murder

THE STATE

versus

WILLIAM HENRY FURMAN

Transcript of trial proceedings in the above styled case heard before the HONORABLE DUNBAR HARRISON, Judge, Superior Court of Chatham County, Georgia and a JURY, on the 20th day of September, 1968.—

APPEARANCES:

For the State:

ANDREW J. RYAN, JR., ESQ., *Solicitor General, Chatham County,* ROBERT BARKER, ESQ., *Assistant Solicitor General,* Chatham County Courthouse, Savannah, Georgia.

For the Defendant:

B. C. MAYFIELD, ESQ., 910 West Broad Street, Savannah, Georgia.

Reporter:

Dorothy R. Brown, Court Commsisioner, EJC of Ga., 207 Courthouse Building, Savannah, Georgia.

Filed in Office March 14, 1969

/s/ Ben P. Axson
Clerk S.C.C.C. Ga.

[fol. 2]

INDEX

	Page
Hearing on Motion by Defense to supress evidence	11-A - 11 EE
Motion by stipulation from State versus Eddie Simmons on challenge to the array	

Witness:	Dir.	Cr.	Redir.	Recr.	ReRedir.	ReRecr.
Mrs. Lanelle Micke	12	20	21	22		
Sgt. G. W. Spivey	23	30	33			
Doctor Harold Smith	35	37				
Officer J. E. Mincey	40	44				
Mr. John F. Walters	46	56				
Officer A. Hall	58	63				
Officer J. R. Goode	64	66	67			
Detective B. W. Smith	67	69	71	73	75	78
Doctor Charles Sullenger	79	81				
Defendant: (Jury Out)	84					
Defendant: Statement	90					
Sgt. G. W. Spivey, Recalled				92		

* * * * *

[fol. 2-a] NOTE: (Hearing on Defense Motion to Suppress Evidence follow immediately hereafter, numbered pages 11-A through 11-EE)

[fol. 3] NOTE: (Selection of jury commenced)

THE COURT: Wait just a moment. Do you want a panel of forty-eight qualified jurors before you—

MR. MAYFIELD: I would respectfully request it, Your Honor.

THE COURT: All right. Call the next twelve and—

MR. MAYFIELD: Your Honor, inasmuch as we have a space problem here, I would simply wish to have advantage of the forty-eight but, of course, have them available—not to have them all—

THE COURT: Well, we have sixty here today—

MR. MAYFIELD: Is this the only case to be tried before a jury, sir?

THE COURT: Yes.

MR. MAYFIELD: Then I am sure we will have the requisite number.

THE COURT: Then are you willing to go ahead and strike this twelve?

MR. MAYFIELD: Yes, Your Honor.

THE COURT: All right.

NOTE: (Selection of jury resumed.)

[fol. 4] NOTE: (During examination of prospective jurors the interrogation proceeded as follows.)

MR. BARKER: Mrs. Weiner, you state that you are opposed, or conscientiously opposed to capital punishment. Does your answer of 'yes' mean that you would refuse to impose capital punishment in a case regardless of the evidence?

MR. WEINER: No.

MR. BARKER: In other words, you might impose capital punishment if the evidence so—

MRS. WEINER: And I may not.

MR. BARKER: And you may not. Do you think that your attitude toward the death penalty would prevent you from making an impartial decision as to the defendant's guilt?

MRS. WEINER: No.
THE COURT: She is qualified.
MR. BARKER: Juror upon the prisoner.
MR. MAYFIELD: Swear the juror.

* * * *

MR. BARKER: Mr. Anchors, I would ask you the same questions, sir. You've stated that you were against —opposed to capital punishment. Does your answer of [fol. 5] 'yes' mean that you would refuse to impose capital punishment in a case regardless of the evidence?
MR. ANCHORS: I believe I would.
MR. BARKER: Do you think that your attitude toward the death penalty would prevent you from making an impartial decision as to the defendant's guilt?
MR. ANCHORS: (Inaudible)
MR. BARKER: Pardon me, sir?
MR. ANCHORS: I said I am opposed—
MR. BARKER: Would this opposition to the death penalty affect your decision as to a defendant's guilt?
MR. ANCHORS: I think it would.
MR. BARKER: I would ask that he be stricken for cause, sir.
THE COURT: All right; have a seat, Mr. Anchors.

* * * * *

NOTE: (Jury selection completed)
THE COURT: Are you all ready to proceed on or do you want a recess?
MR. BARKER: No, sir, we are ready to proceed. However, we do want something to appear on the record.
THE COURT: Take the Jury out.

NOTE: (The jury withdrew from the courtroom.)

[fol. 6] THE COURT: This is the only jury case—
MR. RYAN: Yes, sir. It's the only case . . .

NOTE: (Announcement to other jurors by the Court regarding further service.)

* * * *

MR. RYAN: If Your Honor please, I would like to read into the record the—what took place when juror

number 40, Mr. Alvin W. Anchors, Senior was being asked the voir dire questions by the Clerk. It appears in answer to question number four, "Are your conscientiously opposed to capital punishment?", the juror answered "Yes". Thereafter, when he was put upon the State the State propounded first, question number one, "Mr. Anchors, does your answer of 'yes' to the capital punishment question mean that you would refuse to impose capital punishment in a case regardless of the evidence?" The juror answered "Yes". Question number two by the State, "Do you think that your attitude toward the death penalty would prevent you from making an impartial decision as to a defendant's guilt?" To this question the juror answered "Yes." The State then requested the Court to excuse the juror for cause. The [fol. 7] juror—juror was excused by the Court for cause.

MR. MAYFIELD: If Your Honor please, may the record further reflect that defense counsel objects to the exclusion of any witnesses conscientiously—

UNIDENTIFIED: Any 'juror'—

MR. MAYFIELD: I'm sorry, sir,—any jurors who are conscientiously opposed to capital punishment—and further qualify that statement, Your Honor . . . . the questions that were propounded to the juror by the State, we object to the witness (sic) being excused on those grounds.

THE COURT: Let's see now. There were two or three jurors who stated that they were conscientiously opposed to capital punishment which the Court did not disqualify.

MR. MAYFIELD: That's correct, Your Honor.

THE COURT: No questions were asked them by anyone, so are you taking that as to those—they were not disqualified. There was only one juror—

[fol. 8] MR. MAYFIELD: My objection, Your Honor, is strictly to Mr. Anchors—I believe his name was—Mr. Anchors—

THE COURT: Yes.

MR. MAYFIELD: Yes, sir. That's why I—I interpose my exception to his disqualification only.

THE COURT: All right.

MR. RYAN: I would like it also to appear that juror number 39, Mrs. Hilda P. Weiner—when she was asked question number four by the Clerk of the voir dire questions, "Are you conscientiously opposed to capital punishment?" Mrs. Weiner answered "Yes", she was; however, upon response to the question asked by the State whether or not this attitude of her's would prevent her from making an impartial decision she said it would not and she was accepted by the State, sir.

THE COURT: As I recall, her answer to the question was whether or not her feelings toward capital punishment were such that she would just automatically—

MR. RYAN: Yes, sir.

THE COURT: —refuse to impose the death penalty [fol. 9] regardless of the evidence, and her answer to that was that it would not.

MR. RYAN: Yes, sir, so we—so the State accepted her as a juror, sir.

THE COURT: . . . the defendant would have no objections to Mrs. Weiner being on the jury—

MR. MAYFIELD: We would take our chances with Mrs. Weiner, sir.

THE COURT: I thought so.

MR. RYAN: But what I wanted to appear was that Mr. Anchors was not excused for being opposed to capital punishment, in principle, but he was excused by the Court for the reason that he said that would affect his decision as to the guilt or innocence of the prisoner.

THE COURT: The Court took the position that he would not have been an impartial juror.

• • • • •

[fol. 11] NOTE: (The Jury returned to the jury box)

NOTE: (Witnesses sworn and sequestered. Opening statement presented by the State and waived by the defense.)

• • • •

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

May 29, 1969

I hereby certify that a true and complete copy of the entire record in Georgia Supreme Court Case No. 25163, William Henry Furman v. The State, consists of consecutively numbered pages 1 through 425, and that the first 213 consecutively numbered pages hereto attached constitute Part One of two parts of the said copy of the said record—as appears from the records and files of this office.

Witness my signature and the seal of the said Court hereto affixed the day and year above written.

/s/ Henry H. Cobb
Clerk

[SEAL]

[fol. 12] MR. BARKER: Mrs. Micke, please.

MRS. LANELL MICKE, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q Would you state your name for the record, please?
A Mrs. Lanell Micke.
Q Mrs. Micke, were you the wife of Mr. William Micke?
A Yes.
Q When did Mr. William die?
A August the 11th, 1967.
Q Now, Mrs. Micke, I know it's difficult, but I'll ask you to keep your voice up so this last gentleman in the jury box can hear and understand. Back on the 11th of August, 1967 where were you living?
A 508 West 63rd.
Q Is that area—or is that home located here in Savannah, Chatham County, Georgia?
A Yes, it is.
Q Who was living in the house with you?
A My husband, myself, and five children.
Q And what are the ages of the children?
A Thirteen, twelve, five—and I had one, she was fiifteen at the time—she is not there now—let me start again; fifteen, thirteen, twelve, five, and a year old.
Q Do you have one son named Jimmie?
A Yes.
[fol. 13] Q Is Jimmie a chronic sleep-walker?
A Well, he used to be; yes.
Q And how old was Jimmie on August the 11th, 1967?
A He was eleven.
Q He was eleven. In the early morning hours of August the 11th, 1967 between 2:00 and 2:30 where were the children?
A Jimmie was sleeping in the back bedroom across from the kitchen and the other two girls were in the middle bedroom and I had the baby in the room with me.

Q At that time how old was Mr. Micke?
A He was twenty-nine.
Q And where was Mr. Micke employed?
A He was with the Coastguard.
Q United States Coastguard?
A Yes, sir.
Q Did he have another job to supplement his income?
A Yes, he had just started to work at the Tiffany Lounge that night.
Q ~~What~~ time did he arrive home that night?
A Around 12:00 o'clock.
Q Had you and Mr. Micke retired for the night?
A Yes we had.
Q Had you gone to sleep yet?
A No.
[fol. 14] Q Between 2:00 and 2:30 was there a disturbance in the house?
A Yes, there was.
Q Did Mr. Micke express any idea of what caused the disturbance?
A Well, we both said that it was probably Jimmie—
Q Sleep-walking again?
A Yes.
Q As a result of this what did Mr. Micke do?
A Well, at the first sound we didn't do anything. We just, you know, lay in the bed, and I guess maybe five minutes passed and we heard another sound, sounded like the same identical sound.
Q Where—from what area of your house was the sound coming?
A From toward the dining room and kitchen.
Q From the dining room and kitchen area?
A Yes.
Q Did Mr. Micke get up to investigate?
A After the second noise, yes.
Q And what route would he take from your bedroom to the kitchen area?
A Well, he went out our bedroom door into the living room and from the living room into the dining room and from the dining room into the kitchen.

[fol. 15] Q Did you hear Mr. Micke make any statement as he approached the kitchen area?

A Well, as he went into the dining room I heard him say, "All right, Jimmie, let's go back to bed."

Q 'All right, Jimmie, let's go back to bed.'?

A Yes.

Q What did you hear from then on, Mrs. Micke?

A Oh, seems like a couple of seconds passed and I heard —seems like his footsteps quickened.

Q Mr. Micke's footsteps quickened?

A Yes.

Q All right.

A And then all of a sudden I just heard a real loud sound and he screamed.

Q Did you then go into the kitchen?

A No, I did not. I ran into the bedroom, my daughters' bedroom. I could run through the bathroom into my daughters' bedroom and I got my children and I got them all into my bedroom and we started screaming for Mr. Dozier and Johnny.

Q Now, Mr. Dozier and Johnny lived next door. Is that correct?

A Right.

Q Did they come over?

A They came over shortly after that. I guess we had [fol. 16] to wake them all up and, you know, took them a few minutes to—

Q Were the police called?

A Yes. I called the police.

Q Were they called immediately?

A Just as soon as I got Mr. Dozier up and he came out of his house I got on the phone and called the police.

Q And how long would you say it took the police officers to arrive?

A I'm not sure; just a very few minutes.

Q Did Mr. Micke die as a result of this—

A Yes, he did.

Q —gun shot? Now,—describe to the jury, Mrs. Micke, how the back of the house was set up. If I were to go into the back of the house what would I first enter when I walked up on the steps?

A Small screened in porch.

Q Does the screened in porch enclose the porch entirely?

A Yes, it does.

Q Is there a screen door on the porch?

A Yes.

Q Is there a latch on the screen door?

A Yes.

Q Was there a tear prior to this on the screen door on [fol. 17] the back porch?

A Yes, there was.

Q Do you know whether or not the screen door was locked that night when you went to bed?

A I am not sure that the door was locked, the screen door.

Q To gain entry to the back porch would it be necessary to open the screen door?

A Yes, it would.

Q Was the back door to the kitchen locked?

A Yes, it was.

Q What kind of door was this, Mrs. Micke?

A It was a wooden door, just a normal wooden door is all I can tell you.

Q Normal wooden door—no glass in the—in the door?

A No.

Q Is there a window that goes out onto the porch?

A Yes.

Q Is there anything—

MR. MAYFIELD: Your Honor, I'm going to have to object to Mr. Barker leading this witness.

MR. BARKER: May it please the Court, to ask if there's a window on the porch I don't see—

THE COURT: I don't think that's a leading question. Go ahead.

[fol. 18] Q Was there anything in this window at that time?

A Yes, I had a piece of—fan sitting in the window that we had been using. It wasn't a window fan. It was just a fan that's been setting on a stand and it wasn't on the stand any more and I just had it braced . . . .

Q Did you have any other articles on the back porch?

A I had a washing machine right behind the window.

Q Where was the washing machine sitting—or setting in relation to the window?

A It was setting right behind the window, just to the left of the door that goes out onto the porch.

Q Did you ever have an opportunity after this to look at that window and the fan to see if anything had been disturbed?

A Yes.

Q Was—had anything been disturbed?

A Yes.

Q Would you describe what the condition was when you saw it?

A Yes. My washing machine had been pulled out from the wall where someone could get behind it, looked like, and the fan had been slipped over to the left of the window.

Q How far—you say the fan had been slipped over to [fol. 19] the left in the window?

A Well, from the inside it would have been to the left; from the outside to the right.

Q How far from the window is the kitchen door?

A It's not very—I can just measure . . . just shortly—I don't know just exactly.

Q Could a normal size person reach in through the window and unlock the door?

A Yes.

Q What kind of lock was that on the back door?

A Just a lock on the door—knob and—I think, I'm not sure.

NOTE: (A juror signified that she wished to speak.)

MR. BARKER: Mrs. Weiner—you would have to address the Court; the Judge—Mrs. Weiner would like to know if she could ask a question.

THE COURT: What is the question?

JUROR MRS. WEINER: I'm just curious to know why Mrs. Micke didn't go see what the disturbance was in the kitchen. I mean she said she took her children back into the bedroom and—did you remain there?

THE WITNESS: Well, when I got my children and all, the first thought—I knew somebody was in the house at that time because I heard my husband scream and I

[fol. 20] got my children in there where—I was afraid there was someone else in the house and I got them up there where they wouldn't be harmed, and then we started screaming for Mr. Dozier to get over there because I knew we couldn't take care of anyone that was in the house. We didn't have a gun or anything.

MR. BARKER: Witness with you.

CROSS EXAMINATION

BY MR. MAYFIELD:

Q Mrs. Micke, you do not know who the individual may have made entry into your house, do you?

A No, I don't.

Q And you are not in position to testify that William Henry Furman, defendant on trial today, was the individual who entered your house, can you?

A I cannot.

Q Did you, Mrs. Micke, hear a door slam prior to the sound, the loud sound you heard you testified to on direct examination?

A No, I did not.

Q You did not hear a door slam?

A No, I didn't.

Q But I believe you testified on direct examination that your door is a solid door. Is this correct?

A That's right.

[fol. 21] Q It has no mirror in the center—or near the top?—

A No.

Q It's a solid plywood door?

A Right.

MR. MAYFIELD: Thank you.

RE-DIRECT EXAMINATION

BY MR. BARKER:

Q Mrs. Furman—I mean, Mrs. Micke, I'm sorry—had you ever seen the defendant, William Henry Furman, prior to this date?

A Not that I know of.

Q Whose responsibility would it be to have work done on the washing machine?

A Pardon me—I'm—

Q Whose responsibility would it be if the washing machine were to break down to call somebody to have them fix it?

A I would.

Q Would—had you had any work done on the washing machine prior to this night?

A No.

Q Would the defendant Furman have had any reason at any time to be in or about your back porch or house?

A No.

MR. BARKER: You can come down, ma'am.

THE COURT: Let me ask you one question: this loud noise that you heard, what did it sound like?

[fol. 22] THE WITNESS: Well, I thought somebody had hit him with something. I didn't know what it was. It was just a real loud sound.

THE COURT: Have you ever heard a gun shot—?

THE WITNESS: Yes, I have.

THE COURT: Did this resemble a shot—?

THE WITNESS: No, it did not. I didn't even think it was a gun shot.

THE COURT: All right.

RE-CROSS EXAMINATION

BY MR. MAYFIELD:

Q . . . Your Honor—just one other question: you said the sound that you heard, Mrs. Micke, did not resemble the sound of a gun shot?

A I didn't think it was a gun shot. It was just a real loud sound like somebody had hit him with something. I was just a real loud cracking sound.

Q Could it have been the sound of a door closing?

A No.

Q It did not?

A That was no door closing that I heard; no.
Q But you definitely do not think it was a gun shot?
A Well, I wasn't sure. It just—to me right at the time it didn't sound like a gun shot.
Q Yes. Thank you, ma'am.
MR. BARKER: You may step down.

NOTE: (The witness withdrew)

[fol. 23] MR. BARKER: Sergeant Spivey, please.

* * * *

SERGEANT G. W. SPIVEY, Having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q You are Sergeant G. W. Spivey, Savannah Police Department?
A Yes, I am.
Q Sergeant Spivey, were you so employed on the 11th day of August, 1967?
A Yes, sir, I was.
Q On about the 11th day of August, 1967 at approximately 2:23 A.M. did you get a call to 508 West 63rd?
A Yes, I did.
Q When you arrived at the scene describe to the Court and to the jury what you did.
A I pulled up in front of the house and I was met by Mr. Dozier, who lives next door, and tried to find out from him what the complaint was. I had not learned from my radio—we didn't know. We just knew there was a disturbance there of some type. The lady on the phone was rather hysterical. We couldn't get the straight of it. I pulled up in front of the house and Mr. Dozier told me that there was someone in the house that had broken into [fol. 24] the house—that's what he was able to learn—or . . . was told to me. I tried the front door and it was locked and I couldn't get in through the front door. I

ran around to the back and went in through a screened porch—the screen door was open and the kitchen door was closed, but unlocked. I thurned the door knob and, of course, the door came open. And I was told by Mr. Dozier and his own son that someone was still in the house, or whoever was in there was in the house at that time, and the lights were off in the back of the house. I shined a flashlight into the kitchen and I saw the—I saw a body laying in the floor.

Q Now how did you get your beam of the flashlight into the kitchen?

A I opened the door.

Q Was the door locked or unlocked?

A The door was unlocked, but closed.

Q But closed. All right. Continue.

A Thinking that somebody was in the house I crouched just for a moment outside the door with my flashlight off trying to see—I couldn't see into the house or what was, too much,—the dights were off in the back. After I shined the light in there I saw a man lying on the floor with a lage puddle of blood around his head, around the shoulder and his head area. I continued on into the house then, on [fol. 25] the floor, checked the man's pulse, breathing, what-have-you. Still believing it was someone else in the house other than him, or other than his wife in the front room, I crawled on the floor through the rooms to check and I found nobody in the house other than his wife and children. They were locked up in a front room, front bedroom.

Q At this time did you return to the kitchen?

A I did.

Q Did you check Mr. Micke's vital signs?

A I did again, the second time, after I found the house was clear.

Q At this time what was his condition?

A I could detect no pulse whatsoever and no breath—breathing or nothing. From all appearances to me the man was dead at that time.

Q Did other officers arrive on the scene about that time?

A Yes, sir. After I had checked the man the second time officers came to the front of the house. I walked

through the house to open the door in the front, to let them in the front. I was only about a block, or two blocks, when the call came in, so I—I wasn't dispatched on the [fol. 26] call but I went there, and this is the reason the officers were a little delayed in getting there that were sent on the call. I was there, oh, a good two or three minutes, or four minutes, before they arrived.

Q Did you then request that photographs be made and the area around the back porch and kitchen area of the house be dusted for fingerprints?

A Yes. The first thing I told the Officer who arrived at the front was to call an ambulance, which they did right away. After the ambulance arrived, the ambulance attendants and myself again checked the man on the floor—no disturbance other than check the vital signs—the body was not moved or anything else. At this point, through our closer examination of the man, it was determined by us, the best we could, that he was dead at that time so the fingerprint identification people were called out there for pictures, prints and the kitchen area was sealed off and officers posted there to keep everyone out.

Q All right, sir. Did you examine more thoroughly then the back porch area of the house?

A Yes, sir, I did.

Q How do you make entry onto the back porch?

A There are two or three little steps as you go up to the screened door. The screened door opens onto a small [fol. 27] back porch area and then the kitchen door itself is there, a wooden door.

Q All right. I show you a picture marked State's Exhibit 1 and ask can you identify that picture?

A Yes, sir, this is front—excuse me—this is the front of the house where this man lived.

Q And is this a true representation of the appearance of that house at the time you arrived there?

A Yes, sir, it is. His wife was in this room right—front bedroom right there, by that window.

Q All right. I show you a picture marked State's Exhibit 2 and ask you what does that represent?

A This is the back of the house.

Q Are these the steps that lead into the back porch?

A Yes, sir, it is.

Q What is this door?

A This is a screened door leading onto the small screened porch on the back.

Q All right, sir. I show you a picture marked State's Exhibit 3 and ask what does that represent?

A This is the same picture a little closer up of the same screened porch and the back door, screened door leading into the back porch.

Q All right, sir. I show you a picture marked State's Exhibit 4 and ask you what does that represent?

[fol. 28] A This picture is looking, as you're standing on the screened porch, looking back outside of the same screened door on that small porch.

Q And what is this up in here in the top of the door, or middle part of the door?

A The screen latch, of course unlatched with a hole punched in the screen by the latch.

Q Now, right next to the latch, did you look at that area closely, that hole, to determine whether it was a fresh hole or an old rusted hole?

A I didn't examine it closely, the hole, to tell one way or another.

Q All right, sir. I show you a picture marked State's Exhibit 5 and ask you what that represents?

A This is the kitchen door leading into the kitchen from the screened porch area.

Q All right, sir. I show you a picture marked State's Exhibit 6 and ask you what that represents?

A This is a hole that we found in the door, in the kitchen door, apparently made by a bullet fired through the door from the outside, as the powder burns were on the outside of the door and the splintered wood as a bullet would make, was on the inside of the door.

Q I show you a picture marked State's Exhibit 7 and [fol. 29] ask you what that represents?

A Yes, sir, this is a picture of the splintered wood on the inside of the door; would be the exit of a bullet from this side, meaning the inside of the house, coming into the house.

Q All right, sir. To go back just a moment, State's Exhibit 5, what is this just to the right of the back door, that you have described as the back door?

A The washing machine was setting by the door leading into the kitchen—

Q Was this washing machine dusted for fingerprints?

A Yes, sir, it was.

Q By whom?

A By Officer Mincey.

Q Were you present?

A Yes, sir, I was.

Q Ishow you a picture marked State's Exhibit 8 and ask you what that represents?

A This is the body of the man lying on the floor that I saw as I saw it when I come in the back door.

Q Is this the body of Mr. William Micke?

A Yes, it is.

Q Do all of these—are all of these pictures true representations of the scene as it appeared when you arrived on your investigation, August the 11th, 1967?

[fol. 30] A Exactly.

MR. BARKER: Like to introduce State's Exhibits 1 through 8 into evidence.

MR. MAYFIELD: If Your Honor please, I would like to . . . Mr. Spivey questions, before I would agree to admission of these.

THE COURT: All right.

CROSS EXAMINATION

BY MR. MAYFIELD:

Q Were you present, Mr.—Sergeant Spivey, when these photos were made?

A Yes, sir, I was.

Q And you saw the photographer make these—

A Yes, sir, I did.

Q —photos?

MR. BARKER: At this time, sir—

THE COURT: Any objections?

MR. MAYFIELD: No objections, Your Honor.

NOTE: (States' Exhibits 1 through 8, pictures, admitted in evidence.)

MR. BARKER: —so we would have a little continuity I'd like to pass—just take a couple of minutes to pass the pictures through to the jury.

NOTE: (Jurors examined pictures.)

MR. BARKER: Witness with you.

[fol. 31] FURTHER CROSS EXAMINATION

BY MR. MAYFIELD:

Q Mr. Spivey, were you with the group of officers who apprehended the defendant here?

A No, sir, I was not.

Q Now, you have no knowledge as to how the entry was made in this place, do you?

A No, sir, I—

Q —or if entry was made, do you?

A No, sir, I don't.

Q You have no knowledge, personal knowledge, as to who actually shot Mr. Micke, do you?

A As to seeing it; no, sir.

Q Now, let us direct our attention to this door, Mr. Spivey, the back door to Mr. Micke's house. This is a solid plywood door. Is this correct?

A Yes, sir, it is.

Q About a couple of—about an inch thick. Is this right?

A No, sir, it would not be an inch thick; it's about a quarter of an inch thick.

Q About a quarter of an inch thick?

A Uh-huh.

Q Now, from your investigation could you determine whether or not this door was closed before the bullet made entry penetrating this door?

[fol. 32] A I don't quite follow you.

Q I am saying, sir, could you determine from your investigation whether or not this door was closed—was a straight shot through a door—that is, the bullet hole

through the door or was it a slant—could you determine whether the door was open or closed when the entry was made, the bullet entry was made?

A From appearances to me the door was closed.

Q Closed?

A Right.

Q Now did you at any time have occasion—occasion to interrogate the defendant, William Henry Furman?

A I did not.

Q Was there anyone on the premises at the time you arrived to conduct your investigation?

A At the house?

Q That's right, sir.

A Mr. Dozier, next door, and his son was in the front yard when I arrived.

Q I believe you stated that it was your information that the assailant or the person who had perpetrated this offense was inside the house. Is this correct?

A This is what I was told by the Doziers.

[fol. 33] Q Now, with reference to this back porch, Mr. Spivey, was it a very short back porch—that is, only a few feet from the steps into the back door?

A Yes, I would say seven or eight feet, about like that.

Q It was a considerable sized back porch?

A No, it was—it was small. To me, a small back porch.

Q Seven or eight feet in length or in width?

A In length.

Q In length?

A Uh-huh.

Q Now in width, sir, how many feet would you say? Two feet?

A No, it was larger than that.

Q Little larger than that?

A Probably six, six feet in width.

Q And you have no knowledge of anything that William Henry Furman may have done toward this—at least entering the house, do you?

A No.

MR. MAYFIELD: Thank you.

RE-DIRECT EXAMINATION

BY MR. BARKER:

Q Just one other question: looking at picture marked State's Exhibit 7, is that the inside of the door—the inside of the door where the bullet was fired?

[fol. 34] A Yes, this is the inside.

Q What type of lock does that have on it?

A A snap lock.

Q Is that one of those kind where you just have a regular door knob with a little twist on it?

A Yes, sir, it is. You turn it and you can shut the door and it will lock with this—if you lock it before you close the door and as you lock the door it will stay locked.

Q All right. Right over here (indicating), what is this?

A This is a fan placed in a window right by the back door, a few inches.

Q If you were to go directly out that window, what would you touch or see directly outside the window?

A The washing machine shown in one of the other photographs.

Q State's Exhibit 3—

A Yes, sir.

Q I meant 5, rather.

A Five.

MR. RYAN: Five.

MR. BARKER: All right. You can come down.

NOTE: (The witness withdrew)

MR. BARKER: We'd like to call one witness out [fol. 35] of line. Doctor Smith is here, sir.

Doctor Smith, please.

• • • •

DOCTOR HAROLD SMITH, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q You are Doctor Harold M. Smith?
A Yes, sir.
Q Doctor Smith, you are a medical doctor?
A Yes.
MR. BARKER: The defense stipulates that the doctor is qualified as an expert in his field.
Q Doctor, what is your official capacity with Chatham County?
A Coroner.
Q Doctor, back on the 11th day of August, 1967, did you examine the body of William Joseph Micke, Junior?
A Yes, sir.
Q At the time you examined him what—was he alive or deceased?
A He was deceased.
Q Were you able to determine the cause of death, Doctor?
A Yes, sir.
Q Would you tell the Court and the jury what caused the death of William Joseph Micke, Junior?
[fol. 36] A There was a pistol wound which entered the upper chest right near the midline on the right hand side. The bullet went through the lung producing severe hemorrhage, was found under the skin in the back.
Q Who removed this bullet from the body of William Micke, Junior, sir?
A I did, sir.
Q And what did you do with that bullet?
A The bullet was turned over to Detective B. W. Smith, whose signature is on this card.
Q Was the bullet and the wound produced thereby the cause of the death of William Joseph Micke, Junior?
A Yes, sir. There were no powder burns noted.

* * * *

[fol. 39] THE COURT: The bullet you turned over to Mr. Smith—was that the same bullet that you had taken from the body of Mr. Micke?

THE WITNESS: Yes, sir.

MR. MAYFIELD: Thank you, sir.

* * * *

[fol. 40] OFFICER J. E. MINCEY, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q You are Officer J. E. Mincey?

A Yes, sir.

Q Officer Mincey, you are with the Savannah Police Department?

A Yes, sir.

Q Were you so employed on the 11th day of August, 1967?

A Yes, sir.

NOTE: (The qualifications of the witness as a fingerprint expert were stipulated by the defense.)

Q Officer Mincey, back on the 11th day of August, 1967 were you called to a residence of 508 West 63rd Street?

A Yes, sir.

Q Approximately what time did you arrive?

A I arrived approximately 3:00 A. M.

Q What was your purpose in being there, sir?

A I was called and advised that there had been a burglary and a man had been shot.

Q All right, sir. Did you take pictures at the scene?

A A Yes, sir, I did.

Q Did you also dust the scene for fingerprints?

A Yes, sir, I did.

Q Were you able to find any latent fingerprints on [fol. 41] the back porch of 508 West 63rd Street?

A Yes, sir.

Q In what portion of the back porch did you find the fingerprints?

A There was a washing machine setting on the back porch under a window.

* * * *

[fol. 43] Q And what did your comparison of the known prints of the defendant, James (sic) Henry Furman—William Henry Furman and the latent prints on card marked State's Exhibit 10 and 11 show?

A That the right thumb of the known print and a part of the latent print that came off the top of the washing machine were one and the same.

Q So the print, the known prints of the defendant matched up with the prints removed from the washing machine. Is that correct?

A Yes, sir.

Q All right, sir. What did you then do with cards marked State's Exhibits 10, 11 and 12?

A I put these in an envelope and sent them to the F. B. I.

* * * *

[fol. 46] JOHN F. WALTERS, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q Please state your name and address.

A My name is John F. Walters, that's W-a-l-t-e-r-s. I live in Oxenhill, Maryland.

Q By whom are you employed?

A By the Federal Bureau of Investigation.

Q Where are your official headquarters?

A In the Identification Building in Washington, D. C.

Q And what is your official title, sir?

A Fingerprint Examiner.

Q And what are your official duties?

A Well, official duties consist mainly of examining lifts, photographs and negatives for latent prints, proc-

essing various articles for latent prints, comparing latent prints with the inked prints of known individuals—the findings are then reported and, if requested, I will testify as to the results of my examination. Also, I process [fol. 47] friction ridge skin tissue of un-known deceased persons in an attempt to obtain either inked prints or photograph of the fingerprints. I then compare these prints with the known prints of known individuals in an attempt to aid in the identification. I also aid in the training of special agents of the F. B. I., as well as other law enforcement agencies and I, occasionally, will fingerprint people who, because of deformities or infirmities, cannot be fingerprinted in the normal manner. I also train other individuals how to do the same.

Q How much experience have you had in fingerprint work?

A Twenty and a half years.

* * * * *

[fol. 50] Q Did you examine or process the Exhibits?

A I did examine them, yes, sir.

Q And what was the result?

A That upon examining Exhibit 10 and 11 that I determined that they were latent prints, upon the visible and the lifts present thereon and that there were four latent prints. These latent prints I compared with the inked prints appearing on Exhibit 12 and I determined that the latent prints were made by fingers that made the inked prints that—latent prints appearing on Exhibits 10 and 11 were made by fingers that were made —the inked prints appearing on Exhibit 12.

Q Were the latent prints photographed?

A Yes, they were.

Q Do you have the photographs and the negatives with you?

A Yes, I do.

Q Have you seen these inked fingerprints? State's Exhibit 12?

A Yes. I had these in my possession at one time. That's when I had the photographs and negatives.

Q And this was in your headquarters in Washington.

[fol. 51] Is that correct?

A That is correct.

Q Did you compare the latent prints with the fingerprints appearing on State's Exhibit 12?

A I did.

Q What was the result of your comparison?

A That the latent prints on Exhibit 11—there are two lifts, and on each lift there is a latent print and that one of these latent prints on Exhibit No. 11 was made by the left thumb appearing on Exhibit No. 12 which is a card bearing, or a piece of paper bearing the name of William Henry Furman, and the other latent print appearing on the second lift from Exhibit No. 11 was made by the finger that made the right thumb print appearing on Exhibit No. 12, and referring to Exhibit No. 12 on one of the lifts, there are three lifts present on Exhibit No. 10, two latent fingerprints appear on one of these lifts and those two fingerprints were made by the same fingers that made the right middle finger and the right ring finger appearing on Exhibit No. 12.

* * * * *

[fol. 56] CROSS EXAMINATION

BY MR. MAYFIELD:

Q I certainly want to ask you just a few questions for my own . . .

A Yes, sir.

Q I believe you stated that there was a—ridge arrangement that travels . . . that's formed in the—before the child is born and follows throughout, the person throughout life?

A That is correct.

Q Now—

A This is persistence—

Q Beg pardon, sir?

A This is persistent, yes.

Q Yes. Now, I want to find—that if there are any possible instances wherein you have a partial print—not a whole entire print, but a partial print, that ever compared with some other known prints?

A Not in my experience I have never seen it and, of course, in various books and such in my studies that I have never heard of it, either. This is based upon a number of ridge characteristics that the identifications are affected. It is not a simple—one characteristic, but a number of characteristics that the identification is affected on so far as fingerprints are concerned. And so far as the area that is concerned it makes no difference. [fol. 57] You can compare a fingerprint with a footprint and still the ridge arrangement would not be the same.

Q In truth and fact, are you saying—now, I want to get it straight in my own mind—a partial print would be just as conclusive as far as identification purposes as a whole print?

A That is correct.

MR. MAYFIELD: Thank you. No further questions at this time.

* * * *

[fol. 58] OFFICER A. HALL, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q You are Officer A. Hall, Savannah Police Department?

A Yes, sir, I am.

Q Officer Hall, were you so employed on or about the 11th day of August, 1967?

A Yes, sir, I was.

Q On or about the 11th day of August, 1967 after the hour of 2:30 A. M. did you also answer a call to 508 West 63rd Street?

A Yes, sir, I did.

Q When you arrived on the scene did you see the dead body of Mr. William Micke?

A I did.

Q As a result of this did you and other officers scan out in the area to search?

A Yes, sir.

Q Where did you go? Where did you station yourself?

A Southwest of the house that the murder happened in.

Q All right, sir. Now describe the house at 508 West 63rd, between there and Temple Street is there anything [fol. 59] between?

A A wooded area.

Q A wooded area?

A Yes, sir.

Q And where did you park your automobile?

A I was on Belk Street at the very west end of it at a dead end of the wooded area.

Q And how close is that to Temple Street?

A Half a block.

Q After you stationed yourself at this point did you leave your engine running?

A Yes, sir.

Q Did you turn your lights off?

A Yes, sir.

Q Did you see anyone emerge from the woods?

A Yes, sir. I saw a silhouette of a subject come out of the woods. He was wearing a dirty white shirt with the shirt out of his pants. It was a light shirt.

Q Approximately what size was this person?

A Approximately six feet all. He was thin—built on the—on my order.

Q Was he colored or white?

A Colored subject.

Q Was he male—or female?

A Male.

[fol. 60] Q What happened when the subject came out of the wooded area?—Or first of all, was this from the direction of 508 West 63rd Street?

A I didn't understand you. Would you repeat—

Q Did he come from the direction of 508 West 63rd Street?

A Yes, sir, the house was north of where I was at and he came from a northerly direction out of the woods going south.

Q All right. What happened when he came out of the woods?

A When he came out of the woods he was walking nonchalantly and as—he heard the engine of my automobile—he saw me—we saw each other at just about the same time—he started walking faster and then he broke into a run. It was raining, however.

Q As a result of this what did you do?

A I pursued him and I called for other units to come into the area and Officer Waters was the first one to come to me, and Officer Prouse, he came south of where I was at and I lost the subject and I told Officer Prouse over the radio that the guy had to be between he and myself, you understand, and then Officer Waters and I got out of the automobiles and we started walking, following his foot tracks that the subject had left and they [fol. 61] led us to a house at 5020 Temple Street.

Q Did you go up to the house at 5020 Temple Street?

A Yes, sir, we did.

Q Who was the owner of this home, or who—

A Mr. James Furman.

Q Was he the uncle of the defendant?

A Yes, sir.

Q Did you talk to James Furman at that time?

A I did. We told him that we were in pursuit of a fellow and foot tracks led us into his yard. I asked him did anybody come into his house. He said 'no', but he said, "I did hear a noise in my back yard as if something had turned over or something fell over in the back yard.'

Q Did you get permission from him at that time to search the area?

A Yes, sir, we did.

Q Did you search into the back and side of the house?

A Yes, sir. We followed the foot tracks. They went around on the south side of the house—they went around in the rear and half-way of the house on the north side and then they—there was a can or someting on a little shelf he had in the back yard that had been turned over, you understand. This was the noise that the uncle heard,

[fol. 62] and the foot tracks led under the house halfway on the north side.

Q Did you shine your flashlights under the house?

A Yes, sir, we did.

Q Did you see anyone under the house?

A Yes, sir, we saw a subject under the house.

Q Who was under the house?

A The defendant there.

Q What did the defendant do, if anything, when you shined your flashlights on him?

A Well, he was back under the house facing us, you understand, so we told him to come out. And just as we said 'come out from under the house' he reached as if he was reaching for his back pocket and I pulled my pistol and I pointed it at him and I told him to come out and don't make any move and I reached my hand to him —asked him to take my hand and he reached for my hand—I just pulled him out from under the house.

Q The person that you pulled out from under the house, is that the same person that you saw emerge from the woods?

A Yes, sir.

Q When you pulled him out from under the house, was he advised that he was under arrest?

[fol. 63] A Yes, sir.

Q Was a search made of the individual at that time?

A Yes, sir, it was.

Q By whom was the search made?

A John Goode.

Q That's Officer J. R. Goode?

A Yes, sir.

Q And what, if anything, did Officer Goode get off of the defendant?

A He took a .22 caliber pistol off of him.

Q Did you see anyone else out in the area—any civilians out in the area while you were making your search?

A No, sir. No one.

MR. BARKER: Witness with you.

CROSS EXAMINATION

BY MR. MAYFIELD:

Q Now, Mr. Hall, this defendant whom you pulled from under the house did not make any statement to you, did he?

A No, sir. He did not.

Q And he was not—only thing . . . pursued him because he came out of the woods—?

A Yes, sir.

Q And at no time did he make any admission to you that he had been engaged in a burglary or murder or any other statement?

[fol. 64] A No.

MR. MAYFIELD: No further questions.

MR. BARKER: You can come down. Officer J. R. Goode.

NOTE: (The witness withdrew.)

OFFICER J. R. GOODE, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q You are Officer J. R. Goode, Savannah Police Department?

A Yes, sir.

Q Officer Goode, back on the 11th day of August, 1967, did you in the company of Officer Hall, Officer Waters and Officer Prouse converge on the scene of 5020 Temple Street?

A Yes, sir.

Q As a result of going to that area did you find a person under the house?

A We did.

Q After he was brought out from under the house and advised that he was under arrest did you search the individual?

A I did.

Q What, if anything, did you find on him?
A In his right front pocket I found a .22 caliber pistol.
[fol. 65] Q All right, sir. I show you a pistol marked State's Exhibit 9 and ask you if you can identify this gun?
A Yes, sir, I can.
Q And how do you identify it, sir?
A Right here I have my initials scratched into the weapon and it's dated—also by the serial number.
Q Was the gun—were there any unspent bullets in the gun?
A Yes, sir.
Q How many?
A There was three live rounds and three that had been fired.
Q Had three that had been fired?
A Yes, sir.
MR. BARKER: At this time I would like to introduce the pistol into evidence.
THE COURT: Any objection?
MR. MAYFIELD: No objection, Your Honor.

NOTE: (State's Exhibit No. 9, pistol, admitted in evidence.)

Q Officer Goode, at this time you advised him of his constitutional rights?
A I did. I read him his constitutional rights.
Q He didn't make any statement to you at that time?
A Not at this time, no, sir.
[fol. 66] Q Did you ask him for his address?
A I did.
Q What was his address?
A 708 Sherman Street.
Q Was this at 708 Sherman Street where you found him under the house?
A No, sir; it was 5020 Temple Street he was under the house.
MR. BARKER: Witness with you.

CROSS EXAMINATION

BY MR. MAYFIELD:

Q Mr. Goode, did you have occasion to examine the premises at 508 West 63rd Street?
A No, sir.
Q You did not?
A No, sir.
Q I believe your testimony is that there were three live rounds of ammunition in the pistol. Is that correct?
A Yes, sir.
Q And three spent?—
A Yes, sir.
Q —rounds? Which means—indicating that there were three shots fired. Is that correct?
A That's correct.
Q You didn't at any time examine the premises at 508 East (sic) 63rd?
[fol. 67] A I didn't examine it. I went by there later.
Q Now, let me ask you: this man at no time made no admission or statement to you that he had been engaged, or at least had . . . burglarized anyone's house, or anything, did he?
A You mean at this—this night?
Q Yes.
A Not that particular night, no, sir.
MR. MAYFIELD: No further questions.
Q You don't know—Nothing; no further questions.

RE-DIRECT EXAMINATION

BY MR. BARKER:

Q What did you do with the gun, Officer Goode?
A After I labeled the gun I placed it in a property room bag. I sealed it. I put it in a property room drawer at Police Headquarters.
MR. BARKER: All right. You can come down, sir.

NOTE: (The witness withdrew.)

* * * *

[fol. 71] NOTE: (Jury withdrew from the courtroom.)

RE-DIRECT EXAMINATION

BY MR. BARKER:

Q Detective Smith, on or about the 11th day of August, 1967, did you interview the defendant, William Henry Furman?

A Temporarily—just for a moment or two.

Q Prior to that interview did you advise him of his constitutional rights?

A I did.

Q What did you advise him, sir?

[fol. 72] A I advised him 'before we ask you any questions you must understand your rights. You have the right to remain silent and to refuse to answer any questions. Anything you do say can and will be used against you in a Court of law. You have the right to talk to a lawyer for advise before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer one will be appointed for you before any questions if you wish. If you desire to answer questions now without a lawyer present you will still have the right to stop answering at any time you wish until you talk to an attorney.'

Q What did the defendant state in regards to having an attorney or wanting an attorney?

A I advised him after I advised him of his rights that I had one question I wanted to ask him, and adadvised him 'you do not have to answer if you don't wish' —after I advised him of his rights.

Q And what did he say in regards to wanting an attorney present?

A He did not want an attorney at that time.

Q Did the defendant make a statement?

A He asked me—

Q No—did he make a statement?

[fol. 73] A Yes.

Q Was that statement made freely and voluntarily without hope of reward or fear of punishment held out by you or anyone in your presence?

A That's correct.

Q Did you then propound your question?
A I asked him—
Q Go ahead.
A I asked him one question.
Q And what was that question?
A I asked him 'Did you get in the house?'
Q What was his answer?
A He stated 'yes', that he got in the kitchen; that the man came in the kitchen, saw him in the kitchen, tried to grab him and when he went out the door the man hit the door, slammed the door between them, he turned around and fired one shot and run.

MR. BARKER: We submit that the statement was made freely and voluntarily.

MR. MAYFIELD: Yes, Your Honor—I'd like to ask Mr. Smith a question.

RE-CROSS EXAMINATION

BY MR. MAYFIELD:

Q Did you further advise this defendant, Mr. Smith, that any statement he made could be used against him in a Court of law?
A I did.
[fol. 74] MR. RYAN: He said he did.
Q You did not read that a few minutes ago—?
A Yes, sir. I did.
MR. RYAN: Yes, he did.
Q You did?
A I did.
Q Now, let me ask you: with regard to—do you feel that this man, in talking to him, he understood what you were saying when you advised him of his constitutional rights?
A I asked him did he thoroughly understand it.
Q And what, if anything, did he say at that time, Mr. Smith?
A Pardon?
Q What, if anything, did he say, sir, at that time?
A He said he understood it.
Q Now, did you determine his grade level he had attained in school—

A No, I—

Q —prior to your asking him whether he understood his constitutional rights?

A I asked him when I read him this—this pamphlet here, did he understand what I had asked him. He said he did.

Q So you did not determine from him his degree of [fol. 75] intelligence, did you?

A No, I didn't find out how high he went in school or anything.

Q Yes, sir. You cannot positively testify here today that this man thoroughly, unequivocably understood what you were saying, can you?

A No more than what he answered.

MR. MAYFIELD: Thank you.

MR. BARKER: We submit, sir—

THE COURT: After hearing evidence, I find that there has been no technical, legal objection sufficient to render inadmissible the alleged incriminatory statement of the defendant, and I hold as a matter of fact after a full and definitive determination from a consideration of all the facts that the statements are, and were, voluntarily made and, therefore, are admissible both legally and factually.

MR. BARKER: Bring in the jury, please.

MR. MAYFIELD: Your Honor, just for the record I would like to interpose an exception at this point.

THE COURT: Oh, yes.

NOTE: (The jury returned to the jury box.)

[fol. 76] RE RE-DIRECT EXAMINATION

BY MR. BARKER:

Q Detective Smith, on about the 11th day of August, 1967 at the Savannah Police barracks did you interview the defendant?

A I did.

Q Prior to the interview did you advise the defendant of his constitutional rights?

A Yes, sir, I did.

Q What did you advise him, sir?

A I advised him 'Before we ask you any questions you must understand your rights. You have the right to remain silent and to refuse to answer any questions. Anything you do say can and will be used against you in a Court of law. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer one will be appointed for you before any questions if you wish. If you decide to answer any questions now without a lawyer present you will still have the right to stop answering at any time you wish until you talk to a lawyer.'

Q What did he say in respect to wanting a lawyer present?

A He did not want a lawyer at that time.

Q Did you ask him if he understood what you had just advised him?

[fol. 77] A I asked him 'Do you thoroughly understand what I have read to you?' and he stated that he did.

Q Did the defendant then make a statement?

A I advised him I had one question I would like to ask him.

Q Did he then—

A I asked him one question.

Q Did he make a statement?

A He made a statement.

Q Was that statement made freely and voluntarily without hope of reward or fear of punishment held out by you or anyone in your presence?

A Yes, sir.

Q What question did you propound to the defendant?

A I asked him did he get inside of the house.

Q And what was his answer?

A He stated yes, that he was in the kitchen; the man come in the kitchen, saw him in there and attempted to grab him as he went out the door; said the man hit the door—instead of catching him, he hit the door, the door slammed between them, he turned around and fired one shot and ran.

MR. BARKER: Witness with you.

[fol. 78] RE RE-CROSS EXAMINATION

BY MR. MAYFIELD:

Q Mr. Smith, did you reduce this statement, this alleged statement to writing?

A No, sir, he would not sign any statement in writing.

Q Now, where was this alleged statement made, sir?

A Right inside the station house.

Q At the station house?

A Yes, sir.

Q Now, is it not customary that statements that are made that may be admissions against the interest of the individual usually are reduced to writing?

A I didn't understand the question.

Q Is it not a common police practice that statements or admissions made by individuals accused of crime are reduced to writing?

A Well, quite frequently they refuse to give a statement in writing but they will give you a statement orally.

Q Did you make any overture or any attempt to have him reduce this to writing or you reduce it to writing and have him to acknowledge it?

A I asked him about giving me a written statement and he wouldn't agree to give no written statement at that time.

Q Now, during the time this alleged statement was made were there any other officers present during this [fol. 79] interrogation period?

A Yes, there was.

Q Who were they?

A Officer Goode was one of them.

Q Officer Goode. And who else, sir?

A That's the only one that I remember as being present at the time.

Q But it was not reduced to writing?

A No, sir.

Q Now, he stated he shot backward—is that correct? Or shot behind him? I did not quite get the continuity of it.

A Stated—he stated that the man come in the kitchen, made a grab for him and missed him as he was going out the door and struck the door and the door slammed between them; he turned around and fired one time and ran.

MR. BARKER: You can come down, sir.

NOTE: (The witness withdrew from the courtroom.)

MR. BARKER: Doctor Sullenger.

DOCTOR CHARLES SULLENGER, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q You are Doctor Charles Sullenger of the State Crime Lab?

A I am.

[fol. 80] Q What are your duties—your official duties at the State Crime Lab—?

A I am Senior Toxicologist in charge of the State Crime Laboratory.

MR. BARKER: Let the record show that the defense stipulates the Doctor's qualifications as an expert.

Q Doctor, subsequent to the 11th day of August, 1967 or on the 11th day of August, 1967, was—or were several items delivered to you by Detective B. W. Smith of the Savannah Police Department?

A They were.

Q I show you a pistol marked State's Exhibit 9 and ask you if you can identify this pistol?

A Yes, sir, I can.

Q I show you an envelope containing a bullet marked State's Exhibit 13 and ask if you can identify that?

A Yes, I can.

Q I show you an envelope marked State's Exhibit 14 containing—open it—containing a shell casing and the bullet part of a shell.

A Yes, sir, I can identify that.

Q All right, sir. Now, what does this represent? State's Exhibit 14?

A This is a test bullet and a test shell that I fired [fol. 81] from this revolver.

Q And what did State's Exhibit 13 represent?

A It is a .22 caliber lead bullet that had been removed from the body of Mr. Micke.

Q What request for comparison was made of you, Doctor Sullenger?

A I was asked to determine, if possible, whether this bullet that was removed from the body of Mr. Micke had been fired from this particular firearm.

Q Did you run a ballistics comparison?

A I did.

Q What is your expert opinion of the comparison that you ran?

A In my opinion this gun did fire the bullet that was removed from Mr. Micke's body.

* * * *

[fol. 84] MR. MAYFIELD: Your Honor please, may I respectfully request the Court to excuse the jury for a—

THE COURT: Take the jury out.

NOTE: (The jury withdrew from the courtroom.)

MR. BARKER: To be sure that the record is clear, sir, we have submitted Exhibits 1 through 14 for evidence and they have been admitted. Is that correct?

MR. MAYFIELD: They have been admitted, whatever—

MR. BARKER: Yes.

MR. MAYFIELD: If Youh Honor please, I would respectfully ask and wo ld like for the record, to call the defendant to the stand to ascertain from him whether or not, for the record, he wishes to make a sworn or unsworn statement or no statement at all.

THE COURT: All right.

* * * *

WILLIAM HENRY FURMAN, Defendant, took the stand and made the following statement:

MR. MAYFIELD: Now, will you state your name, please?

THE DEFENDANT: William Henry Furman.

MR. MAYFIELD: And you are the defendant in this case, are you not?

THE DEFENDANT: Right.

[fol. 85] MR. MAYFIELD: You are charged with the murder of Mr. William Micke?

THE DEFENDANT: Right.

MR. MAYFIELD: Now, I have conferred with you, have I not, with regards to whether or not you want to make a statement?

THE DEFENDANT: (Inaudible)

MR. MAYFIELD: Please speak for the record, 'yes' or 'no'.

THE DEFENDANT: No, I don't.

MR. MAYFIELD: No—I said I have conferred with you, have I not?

THE DEFENDANT: Yes, sir.

MR. MAYFIELD: I have talked with you, have I not?

THE DEFENDANT: Yes, sir.

MR. MAYFIELD: I have asked you whether or not you wanted to make a statement and I have given you my advice? . . . Is that correct?

THE DEFENDANT: Yes, sir.

MR. MAYFIELD: Now, would you tell the Court what you advised me—whether or not you wanted to make a statement or not?

THE DEFENDANT: No, I don't.

[fol. 86] MR. MAYFIELD: And you are telling me now that you do not wish to make a statement. Is that correct?

THE REFENDANT: Right.

MR. MAYFIELD: I have conferred with you and given you my advice as to whether or not you should or should not. Is that correct?

THE DEFENDANT: That's right.

MR. MAYFIELD: And it's your considered opinion that you do not want to make a statement?

THE DEFENDANT: That's right.

MR. MAYFIELD: You may come down.

THE COURT: Furman, let me—before you go down, —under the law, under the law you have a right to make an unsworn statement, that is, to tell the jury anything you want to tell them with reference to the case.

THE DEFENDANT: Yes, sir.

THE COURT: It won't be under oath and nobody can ask you any questions—

THE DEFENDANT: Yes, sir.

THE COURT: You can also—you also have the right if you care to do so, to be sworn just like any other witness and can testify in your own behalf. If you are [fol. 87] sworn then, of course, you can be asked questions by your lawyer and the State's lawyer will have a right to cross examine you. Those are two, two rights that the defendant has; a right to give an unsworn statement, which nobody can ask you any questions; you have a right to be sworn just like any other witness. The law gives you those two rights, but as I understand from you, you don't want to make any kind of a statement. Is that right? You don't want to say anything in your behalf?

THE DEFENDANT: (No response)

THE COURT: (To Mr. Mayfield) What do you want to do? You want to talk with him a little bit about the thing, some more? I—

MR. MAYFIELD: Yes, Your Honor—

THE COURT: . . . I've tried to explain thoroughly his choice in—I want him to—

MR. MAYFIELD: Now, let me ask—

THE COURT: —thoroughly understand—he can . . . tell that jury anything he wants to tell them and—

MR. MAYFIELD: Yes, sir.

THE COURT: —and no one can question him about it.

[ofl. 88] MR. MAYFIELD: What we want you to understand now is, do you thoroughly understand what I've tried to tell you and what the Court is telling you?

THE DEFENDANT: Yes, sir.

MR. MAYFIELD: You understand that? You understand you have a right under the law to make an un-

sworn statement to the Court and to the jury and they will give you—give that statement any type of weight that they choose to give it. They can believe it in preference to all the sworn testimony that has been given here today. They can also disregard it in its entirety. Now, under that statement, if you make an unsworn statement, I have no right to ask you any questions—neither does Mr. Barker who represents the State, any right to ask you any questions. No one can ask you any questions. You can go and tell the Court and the jury anything that you want to with reference to this case and anything else that may bear on this case. But, by the same token, you also have the right to make a sworn statement. Under that sworn statement I have a right [fol. 89] to examine you; Mr. Barker has a right to cross examine you. Now, do you thoroughly understand this?

THE DEFENDANT: (Nodded affirmatively)

MR. MAYFIELD: Now, let me ask you also: how far did you go in school?

THE DEFENDANT: Sixth grade.

MR. MAYFIELD: Went to the sixth grade. Now, do you thoroughly understand—I want you to be thoroughly mindful of this now. Do you understand what we are trying to ask you?

THE DEFENDANT: Some of it I don't.

MR. MAYFIELD: Some of it you do?

THE DEFENDANT: 'I don't.'

MR. MAYFIELD: Some of it you don't.

THE COURT: Do you want to tell this jury anything?

THE DEFENDANT: Yes.

THE COURT: You do?

THE DEFENDANT: Yes.

THE COURT: All right.

NOTE: (The jury returned to the jury box)

MR. MAYFIELD: If Your Honor please, I would like to have the defendant take the stand . . . he has requested—

* * * *

[fol. 90] WILLIAM HENRY FURMAN, Defendant, took the stand and made the following statement:

MR. MAYFIELD: Now, Mr. Furman, I would like for you to speak loud enough for the last gentleman here to hear you. Now, I believe you stated you wanted to make an unsworn statement to the jury?

THE DEFENDANT: Yes, sir.

MR. MAYFIELD: You understand what I am saying by the unsworn statement, that I will have no right to ask you any questions and neither will the Solicitor's office have any right to ask you any questions? You understand that?

THE DEFENDANT: Yes, sir.

MR. MAYFIELD: But you want to tell the jury about this case. Is this correct?

THE DEFENDANT: That's right.

MR. MAYFIELD: Now, if this is your choice I want you to tell the jury in your own words—speak loud enough so the last gentleman here can hear you and tell them anything that you want them to know about this case. I cannot ask you any questions and neither can the State ask you any questions. Give your name, your age and everything else about you.

[fol. 91] THE DEFENDANT: William Henry Furman.

MR. MAYFIELD: Speak a little louder, please.

THE DEFENDANT: William Henry Furman. I am twenty-six. I work at Superior Upholstery.

UNIDENTIFIED: Where?

THE DEFENDANT: Superior Upholstery.

MR. MAYFIELD: Speak loud enough now for everyone to hear you and hear you clearly.

THE DEFENDANT: They got me charged with murder and I admit, I admit going to these folks' home and they did caught me in there and I was coming back out, backing up and there was a wire down there on the floor. I was coming out backwards and fell back and I didn't intend to kill nobody. I didn't know they was behind the door. The gun went off and I didn't know nothing about no murder until they arrested me, and when

the gun went off I was down on the floor and I got up and ran. That's all to it.

MR. MAYFIELD: Now, do you have anything else you want to tell this jury about this case?

THE DEFENDANT: Yes, sir, one other thing: they didn't—questioned me down there, down there at the police station, they didn't told me nothing about a law-[fol. 92] yer and I told them who I wanted as an attorney and they still asked me questions and I wouldn't answer none. That's—that's all I've got to say.

MR. MAYFIELD: Anything else you want to say now?

THE DEFENDANT: That's all.

MR. MAYFIELD: You may come down.

NOTE: (The defendant withdrew from the witness stand.)

* * * *

SERGEANT G. W. SPIVEY, recalled, under oath, took the stand and testified as follows:

MR. RYAN: He is calling Mr. Spivey for the purpose of cross examination. He's not his witness.

RE-CROSS EXAMINATION

Q Mr. Spivey, I have only one question I would like to ask you, sir. You examined the premises of Mr. Micke's home, did you not, sir? The door that—

A Yes, I did.

Q And how many bullet holes did you find in the door?

A One bullet hole.

Q And did you further examine the premises for possible penetration of other bullets, or holes, or markings where bullets may have struck?

A No, I did not.

Q There was only one bullet hole in the door. Is that [fol. 93] correct?

A That's right.

MR. MAYFIELD: That's all. Thank you.

NOTE: (The witness withdrew from the witness stand.)

MR. BARKER: You rest?
MR. MAYFIELD: Yes.

NOTE: (Both sides closed.)

END IF EVIDENCE:

* * * * * *

State Exhibit No. 8

[fol. 109] THE STATE

versus

WILLIAM HENRY FURMAN

* * * *

[fol. 110] CHARGE OF THE COURT:

JUDGE HARRISON: You members of the jury, the defendant, William Henry Furman, is on trial for the offense of murder.

The indictment charges the defendant with having on August 11, 1967, with force and arms, did unlawfully and with malice aforethought kill and murder William J. Micke by shooting the said William J. Micke with a pistol contrary to the laws of the State of Georgia, the good order, peace and dignity thereof. To this charge the defendant has entered a plea of not guilty and that forms the issue that you are to try.

I charge you that the defendant entered upon the trial of this case with the presumption of innocence in his favor, and that presumption remains with him throughout the trial of the case until it is shown by competent evidence that he is guilty to a moral and reasonable certainty and beyond a reasonable doubt. Now, a reasonable doubt is a doubt for which you can give a reason. It means just what it says. It is the doubt of a fair-minded, impartial juror honestly seeking the truth; not an arbitrary or a capricious doubt, but a doubt arising from the consideration of the evidence, or from the lack of evidence, or from a conflict in the evidence or from [fol. 111] the statement of the defendant himself. Now if, after considering all the facts and circumstances of the case giving to the defendant's statement just such weight and credit as you think it is entitled to receive, your minds are wavering, unsettled and unsatisfied, then that is the doubt of the law and you should acquit the defendant, but if that doubt does not exist in your minds as to the guilt of the defendant then it would be your duty to convict him.

Now, the defendant has made a statement in this case, as the law gave him the right to do. The law provides

that in every criminal case the defendant may make to the Court and jury just such statement as he sees proper in his own defense. It is not under oath and shall have such force only as the jury think right to give it. You may believe it, if you see proper to do so in preference to the sworn testimony in the case. You may believe it all if you see proper to do so. You may disbelieve it all. You may believe a part and disbelieve a part. The force, effect and credit to be given to the defendant's statement is a matter entirely for the consideration of the jury.

I charge you further that where in any given case the substantial part of the case is dependent on circumstan- [fol. 112] tial evidence, that is, where there are no actual eye witnesses to the homicide and that proof of the possible guilt of the defendant is dependent on facts and circumstances which the State contends establishes his guilt, in such a case the burden is upon the State, not only to prove his guilt beyond a reasonable doubt, but to prove his guilt to the exclusion of every other reasonable hypothesis save that of the guilt of the accused.

The object of all legal investigations is the discovery of the truth. Direct evidence is that which points immediately to the question at issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining by their consistency the hypothesis claimed. To warrant a conviction on circumstantial evidence the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused.

In the investigation of all matters, civil as well as criminal, the true function of the Court and jury is in the ascertainment of the truth. This defendant is presumed to be innocent and that presumption continues [fol. 113] with him throughout the trial of the entire case and until his guilt has been made to appear to you by evidence which you can believe to a reasonable and moral certainty and beyond a reasonable doubt.

I charge you further that where there are two theories or conclusions, that the evidence might point to, one of the theories being consistent with the guilt of the de-

fendant and the other being consistent with his innocence, and if you find this to be a fact, and that reasonable deductions lead to his guilt on one hand and that reasonable deductions lead to his innocence on the other, the justice and humanity of the law compel you to accept the theory which is consistent with his innocence and give the defendant the benefit of the doubt and accept the theory that would indicate the innocence of the defendant.

I charge you that an admission, as applied to a criminal case is the avowal of a fact or circumstance by the defendant, not amounting to a confession of guilt but, tending to prove the offense and from which guilt may be inferred. An incriminating statement is one made by the defendant which tends to establish the guilt of the accused or one from which, together with other proven facts, if any, guilt may be inferred, or one which tends to disprove some defense set up by the accused. [fol. 114] Admissions and incriminating statements are not direct, but circumstantial, evidence and should be scanned with care and received with great caution. The jury may believe admissions or incriminatory statements in whole or in part, believing that which they find to be true and rejecting that which they find to be untrue, unless the State relies solely upon such admissions or statements. Admissions must be freely and voluntarily made and made without the slightest hope of benefit or remotest fear of injury. Unless thus made they must not be considered.

The charge against the defendant is that of murder. Murder is the unlawful killing of a human being in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Implied malice may exist and there may be no evidence of express malice, but it may be implied. Implied malice, says the law, is where no considerable provocation appears and where all of the circumstances of the killing show an abandoned and malignant heart. Now an abandoned and malignant heart, in the sense of the law, is

[fol. 115] commonly held to be evinced by a weapon likely to produce death and by a brutal and bloodthirsty use of the same. Whether or not a given instrument is a weapon likely to produce death, when used in the manner in which it was used, is in every instance a question for the jury. In other words, murder is the intentional killing of a human being, or the killing of a human being by the intentional use of a weapon that as used is likely to kill and a killing without justification, mitigation or excuse. The punishment for persons convicted of murder shall be death, but may be confinement in the penitentiary for life if the jury trying the case shall so recommend.

I charge you that involuntary manslaughter shall consist in the killing of a human being without intention to do so, but in the commission of an unlawful act, or a lawful act, which probably might produce such consequence in an unlawful manner provided, that where such involuntary killing shall happen in the commission of an unlawful act which in its consequences naturally tends to destroy the life of a human being or is committed in the prosecution of a crime punishable by death or confinement in the penitentiary, the offense shall be deemed [fol. 116] and adjudged to be that of murder.

I charge you that burglary is the breaking and entering into the dwelling, mansion or storehouse or other place of business of another where valuable goods, wares, produce or any other article of value are contained or stored, with intent to commit a felony or a larceny. There are several ingredients in the offense of burglary. It must be a dwelling or place of business of another. There must be both a breaking and entering into the dwelling or place of business, and such breaking and entering must be with intent to commit a felony or a larceny. Any removal of those things which are usually found in buildings to protect them from intruders on the outside would be a breaking within the law. It is a breaking within the law of burglary to raise a window that is found down. It is a breaking to break a glass of a window and raise the latch and raise the window afterwards. It is a breaking to turn the knob of a door and

enter by that means. It must be such force as used as would be necessary to break into a house and which destroys or puts out of the way those safeguards about a house that are intended to protect the house from intruders from without and there must be an entering [fol. 117] after the breaking. There must be an entering into the house. This breaking and entering must be done with intent to commit either a felony or a larceny. Burglary is punishable by imprisonment in the penitentiary for not less than one nor more than twenty years. If you believe beyond a reasonable doubt that the defendant broke and entered the dwelling of the deceased with intent to commit a felony or a larceny and that after so breaking and entering with such intent, the defendant killed the deceased in the manner set forth in the indictment, and if you find that such killing was the natural, reasonable and probable consequence of such breaking and entering then, I instruct you that under such circumstances, you would be authorized to convict the defendant of murder and this you would be authorized to do whether the defendant intended to kill the deceased or not.

Take this case, take the rules of law I have given you and apply them to the evidence in the case. If you find the defendant guilty as charged in the indictment, if you are satisfied beyond a reasonable doubt that he is guilty of murder, you should so find, and the form of your verdict would be, "We, the jury, find the defendant guilty." Now that, without more, would mean that the [fol. 118] Court would, of necessity, sentence the defendant to the extreme penalty of the law which would be death by electrocution. If you find the defendant guilty of murder and in the exercise of the discretion which is left you by the law you should recommend mercy, then the form of your verdict would be, "We, the jury find the defendant guilty and recommend mercy." That form of verdict would carry as the punishment imprisonment in the penitentiary for life.

I charge you that the punishment for murder is death by electrocution, but you, the jury, have the right in your discretion to recommend him to the mercy of the

Court and fix the punishment for life, either of which actions by you would be binding upon the Court. The jury does not have to give any reason for its action in fixing the punishment at life or death. It does not even have to find that there were extenuating circumstances. The punishment is an alternative punishment and may be one or the other as the jury sees fit.

Now, if you do not believe the defendant guilty, or if you have a reasonable doubt in your minds as to his guilt, it would be the duty of the jury to give the defendant the benefit of that doubt and to find him not guilty, in which event the form of your verdict would [fol. 119] be, "We, the jury, find the defendant not guilty."

Now, whatever your verdict might be it must be unanimous, in writing, dated, signed by one of you as foreman and returned into Court. You will write out your verdict on the back of the indictment and return it into Court.

You may now retire and consider your verdict.

NOTE: (The jury withdrew to the jury room at 3:35 o'clock P.M.)

NOTE: (The jury returned to the jury box at 4:10 o'clock P.M.)

THE COURT: Some question you want to ask me?

JUROR: Yes, Your Honor.

THE COURT: Is it a question of law or a question of fact?

JUROR: It's a question of law.

THE COURT: All right.

JUROR: It's—among the jurors . . . a difference of opinion on the verdict that we can render. Can we render a verdict, leaving it to the discretion of the Court—

THE COURT: No, sir. I have given you the forms of the verdicts. It's up to the jury to determine.

JUROR: That's all we need.

END OF CHARGE:

NOTE: (The jury retired to the jury room and returned to the jury box at 5:10 o'clock P. M.)

* * * *

[fol. 120] NOTE: (At the request of defense counsel the jury was polled and all answered in the affirmative as to the correctness of their verdict.)

NOTE: (The defendant sentenced by the Court.)

MR. MAYFIELD: Your Honor, note for the record that an appeal will be filed immediately.

THE COURT: All right.

END OF TRIAL PROCEEDINGS:

* * * *

[fol. 121] CERTIFICATE

I certify that the above and foregoing one hundred and twenty-one pages of typewritten material, plus pages of motions contained herein as part of the record, were taken down and then transcribed by me, and I certify that the same contain a true and correct transcript of said trial proceedings.

I further certify that I am a disinterested party to this action and that I am not of kin nor counsel to any of the parties hereto.

This 29th day of October, 1968.

/s/ Dorothy R. Brown
DOROTHY BROWN
Court Commissioner, EJC
of Ga.

SUPREME COURT OF GEORGIA

Decided: Apr. 24, 1969 April Term, 1969 #105

25163

FURMAN

v.

THE STATE

DUCKWORTH, Chief Justice. This case involves the crime of murder by shooting, occurring during a burglary after the intruder had been discovered by the deceased who was then shot through a closed door. The accused was indicted, tried and convicted without a recommendation for mercy. A motion for new trial, as amended, was filed, heard and overruled, and the appeal is from the judgment, after conviction, and sentence with error enumerated on the denial of the motion for new trial, as amended. *Held:*

1. A juror having been excluded for cause because he stated that his opposition to the death penalty would affect his decision as to a defendant's guilt, his exclusion did not fall within the rule as laid down in Witherspoon v. Illinois, 391 U. S. 510 (88 SC 1770, 20 LE2d 776), and the court did not err in excluding him for cause. There is no merit in the amended motion complaining that the exclusion violated the rule in the Witherspoon case, supra.

2. The record showing a definitive determination from a consideration of the evidence by the trial judge, out of the jury's presence, that upon his arrest the accused had his constitutional rights explained to him; including the right to remain silent, the right of counsel, and that anything he said might be used against him in court, and that he thereafter freely and voluntarily and knowingly made certain statements in regard to the crime, the same was admissible both legally and factually, and all the requirements of Miranda v. Arizona, 384 U. S.

436 (86 SC 1602, 16 LE2d 694, 10 ALR3d 974); Gideon v. Wainright, 372 U. S. 335 (83 SC 792, 9 LE2d 799, 93 ALR2d 933); Escobedo v. Illinois, 378 U. S. 478 (84 SC 1758, 12 LE2d 977); and Jackson v. Denno, 378 U. S. 368 (84 SC 1774, 12 LE2d 908, 1 ALR3d 1205), have been complied with fully and completely. We find no merit in the contention of counsel that his constitutional rights had been violated.

3. We find no violation of Miranda v. Arizona, 384 U. S. 436, supra, as contended by counsel, hence the extrinsic evidence of fingerprints, admissions, and pistol were properly allowed in evidence against him and should not have been suppressed. Manor v. State, 223 Ga. 594 (3) (157 SE2d 431); Schmerber v. California, 384 U. S. 757 (86 SC 1826, 16 LE2d 908); Terry v. Ohio, 392 U. S. 1 (88 SC 1868, 20 LE2d 889).

4. The statutes of this State authorizing capital punishment have repeatedly been held not to be cruel and unusual punishment in violation of the Constitution. See Sims v. Balkcom, 220 Ga. 7 (2) (136 SE2d 766); Manor v. State, 223 Ga. 594 (18), supra. Hence, there is no merit in this complaint.

5. The record discloses that the accused was arrested on August 11, 1967, and a commitment hearing held on August 15, 1967. While Code Ann. § 27-212 (Ga. L. 1956, pp. 796, 797) requires a hearing within 48 hours, nevertheless, a detention or imprisonment beyond a reasonable time does not render the verdict of a jury after indictment illegal or void. It has already been held above that the evidence of fingerprints, pistol and admissions which were obtained after his arrest could be used against him, and no secret inquisition or interrogation is claimed in this case. See Dukes v. State, 109 Ga. App. 825 (1) (137 SE2d 532); Pistor v. State, 219 Ga. 161 (132 SE2d 183).

6. The admission in open court by the accused in his unsworn statement that during the period in which he was involved in the commission of a criminal act at the home of the deceased, he accidentally tripped over a wire in leaving the premises causing the gun to go off, together with other facts and circumstances surrounding

the death of the deceased by violent means, was sufficient to support the verdict of guilty of murder, and the general grounds of the motion for new trial are not meritorious. See Code § 26-1004; Williams v. State, 222 Ga. 208 (149 SE2d 449); Manor v. State, 223 Ga. 594, supra.

7. Having considered every enumeration of error argued by counsel in his brief and finding no reversible error, the judgment is

Affirmed. All the Justices concur.

SUPREME COURT OF GEORGIA

Atlanta, April 24, 1969

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

WILLIAM HENRY FURMAN

v.

THE STATE

This case came before this court upon an appeal from the Superior Court of Chatham County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

SUPREME COURT OF THE UNITED STATES

No. 5059, October Term, 1970

JOHN HENRY FURMAN, PETITIONER

v.

GEORGIA

On petition for writ of Certiorari to the Supreme Court of the State of Georgia.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to the following question:

"Does the imposition and carrying out of the death penalty in this case constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?"

June 28, 1971

No. 69-5003

Supplemental brief in support of petition filed May 11, 1971. See No. 68-5007.

For the following briefs, see No. 68-5027:

Motion of Jas. V. Bennett et al. for leave to file amici curiae brief.

Motion of the NAACP et al. for leave to file amici curiae brief.

Motion of Amer. Civil Liberties Union for leave to file amicus curiae brief.

Motion of The Synagogue Council of America and Its Constituent et al. for leave to file brief amici curiae brief.

Motion of Hon. Edmund E. Brown, former Gov. of Calif., et al., for leave to file brief amici curiae.

Motion of State of Alaska for leave to file brief amicus curiae.

Motion of Dist. Atty. for the Eastern Circuit of Ga. for leave to file brief amicus curiae.

Petition for rehearing filed July 24, 1972. See No. 69-3.